

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRIAN J. PIERCE,
Petitioner,

V.

LUIS SPENCER,
Respondent.

Civil Action No. 05-10292-RWZ

MOTION TO DISMISS

Respondents move, pursuant to F.R.C.P. 12(b)(1), that the Petition for Habeas Corpus (Paper No. 1) be dismissed. The petition should be dismissed because it is, as this Court and the First Circuit have explicitly held, a second or successive petition barred by 28 U.S.C. § 2244(b)(3)(A). This Court accordingly lacks subject matter jurisdiction over the petition, requiring its dismissal.

For this reason and the reasons set forth more fully in the accompanying memorandum of law, the Petition should be dismissed.

Respectfully submitted,
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